

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KELVIN ANDRE SPOTTS, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et. al.,

Defendants.

CIVIL ACTION NO. 3:12-CV-583

(Judge Kosik)

FILED
SCRANTON

FEB 27 2013

PER *[Signature]*

DEPUTY CLERK

MEMORANDUM AND ORDER

AND NOW, this 27th day of February, 2013, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Kelvin Andre Spotts, a prisoner formerly confined at USP-Canaan, Pennsylvania¹, filed the instant Bivens civil rights action and Federal Tort Claims Act ("FTCA") action on March 30, 2012;

(2) In his Complaint, Plaintiff, and several other inmates, raise an Eighth Amendment cruel and unusual punishment claim and negligence claim on the part of the prison and its officials in the preparation and the service of chicken resulting in an outbreak of salmonella poisoning;

(3) The action was assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation;

(4) On January 10, 2013, the Magistrate Judge issued a Report and Recommendation (Doc. 99) wherein he recommended that the Plaintiff's motions for preliminary injunctions or temporary restraining orders (Docs. 89 and 90) be denied²;

(5) Specifically, the Magistrate Judge found that the Plaintiff failed to demonstrate that he is entitled to the extraordinary preliminary injunctive relief that he

¹Plaintiff was transferred to USP- Beaumont, Beaumont, Texas on January 22, 2013 (Doc. 108).

²The Docket Sheet indicates the Report and Recommendation was mailed to Plaintiff on January 10, 2013.

sought under the circumstances³;

(6) Plaintiff has failed to file timely objections to the Magistrate Judge's Report and Recommendation⁴;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C.A. §636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987);

(8) We have considered the Magistrate Judge's Report and we concur with his recommendation. We agree that plaintiff did not satisfy the rigorous requirements for obtaining preliminary injunctive relief;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated January 10, 2013 (Doc. 99) is **ADOPTED**; and

(2) The Plaintiff's motions for preliminary injunctions or temporary restraining orders (Docs. 89 and 90) are **DENIED**.



Edwin M. Kosik
United States District Judge

³Moreover, we note that because plaintiff is no longer housed at USP- Canaan, many of his requests for injunctive relief are moot.

⁴On February 22, 2013, Plaintiff sent this court a letter advising of his change of address and of the status of his personal and legal property. Plaintiff may file a separate action regarding any retaliation and/or property issues.